



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Motion to Except Pleading One Day
Late in NSD File No. L-99-65 ; CC Docket 96-98

Dear Ms. Salas,

The Association for Local Telecommunications Services, hereby requests that the Commission accept the enclosed Comments in the above-captioned proceeding one day late. The Association's consultant in this matter experienced computer difficulties yesterday and there was a communications failure between the consultant and the Association's office in the District. No party should be adversely affected by the acceptance of the late-filed pleading.

Should you have any questions about the enclosed, please do not hesitate to call me at 969-2585.

Sincerely

Emily M. Williams

Emily m. Williams

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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SEP 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Petition of the Illinois Commerce)
Commission for Expedited Temporary Waiver)
Of 47 C.F.R. Section 52.19(c)(3)(ii))

NSD File No. L-99-65
CC Docket 96-98

**COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services ("ALTS") hereby submits these comments, pursuant to Public Notice DA 99-1631, regarding the Illinois Commerce Commission's ("ICC's") Petition for Expedited Temporary Waiver of Section 52.19(c)(3)(ii) of the Federal Communications Commission's ("Commission's") rules, filed August 10, 1999 ("Illinois Petition"). ALTS is the leading national trade association representing facilities-based competitive local exchange carriers ("CLECs"). Several members of ALTS provide service in the Chicago area and would be adversely affected by any waiver that the Commission might grant.

In its Petition, the ICC requests an expedited temporary waiver of the 10-digit dialing requirement¹ for the 847, 312, 773, 630, and 708 NPAs in the Chicago metropolitan area until the last of four newly assigned area code overlays is activated.

¹ Section 52.19 of the Commission's Rules requires that no area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the proposed overlay area. See *generally* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order*, CC Docket No. 96-98, FCC 96-933 (rel. August 8, 1996) ("Second Report and Order").

As shown below the requirements for grant of a waiver of the Commission Rules has not been met and grant would not be in the public interest.

First, of course, Section 1.3 of the Commission's rules authorizes the Commission to waive its rules only upon "good cause" shown. The Commission and courts have held that this requires a petitioner to demonstrate that *special* circumstances warrant a deviation from the general rule and that such deviation will serve the public interest. See, e.g., WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969). Waivers are not, and should not, be granted routinely. And, in the instant case, the petitioners have neither shown that they nor the people of Illinois are in a substantially different position than others affected by the rules nor that they are uniquely disadvantaged by the rules for which waiver is sought. The ICC simply generally argues that the projected area codes will exhaust within 18 months of each other, and that a temporary waiver will minimize disruption and customer confusion that could result from implementing the 10-digit dialing requirement one area code at a time. This does not amount to special circumstances.

Waiver of the rules also would not be in the public interest because it would allow a dialing disparity to exist between incumbent local exchange carriers ("ILECs") and new entrant competitors during a critical time in the development of local competition in the Chicago metropolitan area. Furthermore, to the extent that grant of a waiver would establish a precedent for future state commission requests for waiver of the 10-digit dialing requirement, it would open the door to a dialing disparity existing throughout the country and undermine the Commission's mandate to encourage widespread development of competition in all telecommunications markets.

Furthermore, the Ameritech switches in the affected NPAs, as well as those of the substantial majority of Ameritech's competitors already support 11 digit permissive dialing of all calls, including those in the "home" area code. Hence if the Illinois Commission's intent is to minimize confusion during the transition, its efforts would be better spent by encouraging 10-digit dialing now before the practice becomes mandatory.²

As ALTS explained in its recent comments to the Notice of Proposed Rulemaking ("NPRM") in the Numbering Resource Optimization proceeding,³ the requirement for 10-digit dialing is essential to ensuring that an overlay does not unduly disadvantage CLECs and their customers. ALTS recognizes that some consumers initially may be uncomfortable with having to dial 10-digits to complete calls. ALTS also believes, however, that those temporary concerns are outweighed by the long-term anti-competitive effects that accompany overlays without 10-digit dialing requirements. The inconvenience associated with dialing additional digits is not as significant as the ill effects that consumers will encounter if new entrants are forced to compete in a market where their customers must dial more digits than their incumbent competitors' customers to complete calls. An overlay without 10-digit dialing makes it significantly more difficult to market new services, even if a new entrant offers lower prices and better quality services than the incumbent. As a result, without application of the 10-digit dialing requirement, coincident with activation of an overlay, consumers will be denied meaningful choice in local markets, and the promise of the 1996 Act will be denied them.

² In fact, of course, the procedure in Chicago will be 1+ 10-digit dialing for all calls.

The rule setting forth the 10-digit dialing requirement was established after careful consideration of arguments made by several industry participants on the anti-competitive effects on new entrants, as well as the adverse effects to the public and local competition in general, of area code overlays without mandatory 10-digit dialing. In so doing, the Commission concluded that the rule is necessary to avoid those anti-competitive effects. Specifically, the Commission stated that:

competing exchange service providers, most of which will be new entrants to the market, would have to assign to their customers numbers in the new area code, which would require those customers to dial 10-digits much more often than the incumbent's customers, and would require people calling the competing exchange provider's customer to dial 10-digits when they would have to dial 7-digits for most of their other calls.⁴

The Commission's conclusion that 10-digit dialing is needed to encourage local exchange competition and ensure that all providers are allowed to compete on a level playing field is just as relevant today as it was when that pronouncement was made. Although some supporters of the waiver may suggest that circumstances have eliminated or reduced the importance of the 10-digit dialing requirement, this is simply not true.⁵ For example, it may be suggested that CLECs will have obtained significant NXX code assignments in the NPAs to be overlaid, and local number portability ("LNP") provides further access to numbers in the old NPAs. Neither of these "circumstances" alter the competitive necessity of retaining the 10-digit dialing requirement. First, in

³ See Comments of Association of Local Telecommunication Services at 30-31, filed August 2, 1999, In the Matter of Number Resource Optimization, CC Docket No. 99-200.

⁴ Second Report and Order at ¶1287.

⁵ And, in any event, as noted above, such circumstances would warrant, if anything, a rule change, not a waiver.

most areas CLECs have only one or very few NXX codes per rate center, compared to enormous inventories held by the ILEC – there's simply no comparison. Moreover, future entrants will have *no* NXXs codes in NPAs that have fully exhausted. The 10-digit dialing requirement protects not only existing CLECs, but future entrants as well. Second, the fact that LNP allows new entrants to compete for part of the market, *i.e.*, those customers who do not require new or additional service, without this dialing disparity is irrelevant – no market segment should be closed to competition as a result of anti-competitive number administration practices.

The Illinois Petition implies that the waiver being sought would allow the 10-digit dialing requirement to be postponed for no more than 18 months – the approximate difference between when the first and last of the area codes are projected to exhaust. Even taken at face value, requiring carriers to compete for as long as 18 months with a dialing disparity will inevitably reduce the potential success of new entrant carriers during a critical stage of market entry. However, the ICC's waiver request is in fact open-ended, with the waiver lasting until the last of the five NPAs requires a new NPA, and that period, depending upon demand and the introduction of other optimization measures which the ICC and the industry support, could last *several years* beyond the predicted 18-months.

As the Illinois Petition acknowledges, Illinois has successfully forestalled the need for area code relief in the 847 NPA as a result of implementation of thousands block pooling and other number conservation measures.⁶ In fact, based on the most recent prediction of 847 exhaust in first quarter of 2000, the life of the 847 NPA will have been extended by approximately 18 months from fourth quarter 1998 to first quarter

2000. Since all possible conservation measures have been applied to the 847 NPA, there now is no reason to expect this NPA to last significantly beyond 1Q2000. However, the ICC has only recently ordered the extension of number pooling to the 312, 630, 708, and 773 NPAs. If number pooling has the same impact on these NPAs as it did in the 847 NPA, their exhaust dates will likely be extended well beyond the current projected dates. For example, if the same extended life from pooling is gained in the 708 NPA (the last of the NPAs projected to exhaust) as was gained in the 847 NPA, 708 would not exhaust until fourth quarter of 2002. Assuming the 847 overlay is implemented as expected in first quarter 2000, the grant of the requested waiver would result in a nearly 3 year waiver of the 10-digit dialing requirement.

As the Commission well knows, the need for the 10-digit dialing requirement is greatest during the years immediately following introduction of the new overlay NPA, when the new NPA is very lightly populated relative to the old NPA. During this time, customers assigned numbers in the new NPA would mostly be calling numbers in the old area code and have to dial 10-digits, while customers in the old area code would mostly call numbers in the same area code with 7-digit dialing. Although the disparity will diminish over time, as the number of assignments in the new NPA grows, there is no parity until eventually there are an equal number of assignments in both area codes. In this case, a waiver that lasts 3 or more years effectively eviscerates the goal of the requirement by eliminating it when it is needed most.

Contrary to the assertions in the Illinois Petition, a waiver of the 10-digit dialing requirement until the last of the four overlays are activated in the Chicago metropolitan area is not necessary "to allow the ICC to implement the Commission's 10-digit dialing

⁶ Illinois Petition at 2-3.

requirement uniformly in the Chicago metropolitan area.”⁷ If the ICC believes that customer confusion and disruption would be minimized if 10-digit dialing were implemented simultaneously and uniformly throughout the Chicago area, it can order mandatory 10-digit dialing to begin in all five NPA areas at the time it is required in the *first* of the NPAs to activate an overlay – not the last. There is simply no reason, and no justification offered in the Illinois Petition, for waiting until the last of the overlays are activated to implement 10-digit dialing. The ICC can exercise options in fashioning the best area code relief plan for the Chicago metropolitan area, without undermining a fundamental competitive protection established by the Commission.⁸ Finally, the Illinois Commission argues that a temporary waiver would be consistent with the Commission’s past action involving grant of a waiver to the New York Department of Public Service (“NYDPS”).⁹ Contrary to this claim, the waiver requested (and ultimately granted) for New York was substantially different. The NYDPS waiver involved only two area codes, with overlays scheduled three months apart (July 1999 and October 1999), and a date-certain by which the 10-digit dialing would be implemented in both NPA areas. The Illinois request involves five NPAs, with overlays scheduled *at least* 1½ years apart (and which may turn out to be several years apart), and with no date-certain when 10-digit dialing would be implemented in any of the NPA areas. Clearly, these waiver requests are not consistent in the most critical aspects.

⁷ Illinois Petition at 5.

⁸ In a similar situation, Maryland elected to implement uniform 10-digit dialing throughout the state to coincide with the exhaust of the first of two area codes. An overlay NPA was not needed in the 301 NPA (the second of the Maryland area codes to exhaust) until well after mandatory 10-digit dialing was in place.

⁹ *Id.* at 6.

CONCLUSION

ALTS respectfully requests the Commission deny the ICC's request for a temporary waiver of the 10-digit dialing requirement in 47 C.F.R. 52.19(c)(3)(ii) for the 847, 312, 773, 630, and 708 NPAs. The Commission's 10-digit dialing requirement is vital to ensuring dialing parity among ILECs and CLECs. The need for the requirement is greatest during the years immediately following introduction of the new overlay NPA, and made even more important at a time when competition is just getting established. The ICC can ensure uniformity of 10-digit dialing implementation in the Chicago area without asking the Commission to undermine a fundamental competitive protection.

Respectfully submitted,

The Association for Local
Telecommunications Services

By: Emily M. Williams
for Elizabeth G. Kistner

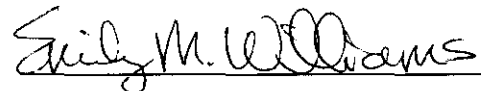
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September 17, 1999

Certificate of Service

I hereby certify that on this 17th day of September, 1999, copies of the foregoing Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand, to the parties listed below.

A handwritten signature in black ink, reading "Emily M. Williams", is written over a horizontal line.

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